

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JOHNATHAN and TRUDE YARGER, et al.,

Plaintiffs,

Civil Action No. 11-154-LPS

v.

ING BANK, FSB D/B/A ING DIRECT,

Defendant.

PROPOSED ORDER WITH RESPECT TO NOTICE

On May 7, 2014, on unopposed motion, this Court entered an Order of Preliminary Approval of Settlement (D.I. 232) (the “Preliminary Approval Order”), in which it, *inter alia*, (a) determined that the method of providing notice of the proposed settlement, as specified in the Settlement Agreement dated April 8, 2014 (the “Settlement Agreement”) was reasonable and appropriate; (b) approved the written Notice of the proposed settlement; (c) directed the Settlement Administrator to mail the Notice of the proposed settlement on or before June 23, 2014; and (d) directed the Settlement Administrator to send the Email Notice to those Settlement Class members who have supplied an email address to Capital One. Subsequently, on July 25, 2014, the parties submitted a letter to the Court (D.I. 235) (the “Letter”), which notified the Court that the Notice, which had been submitted as Exhibit 2 to the Settlement Agreement and mailed to Settlement Class Members, contains an inaccuracy and requested an order authorizing the Settlement Administrator to take action to correct this inaccuracy.

Having considered the Letter, the terms of the Settlement Agreement (including exhibits thereto), and the Preliminary Approval Order,

THE COURT FINDS AS FOLLOWS:

1. This Order incorporates by reference the definitions in the Settlement Agreement, and all capitalized terms used in this Order will have the same meanings as set forth in the Settlement Agreement, unless otherwise defined in this Order.

2. Pursuant to the Settlement Agreement, Final Settlement Class Members who are borrowers on Loan Accounts listed on the Rate Spread Account List (“Rate-Spread Borrowers”) will receive \$15 for each \$100,000 of original principal balance of their loan (“Rate-Spread Payments”). The Notice inaccurately states that Rate-Spread Borrowers will receive \$25 for each \$100,000 of original principal balance. (This inaccuracy in the Notice is sometimes referred to herein as the “Typo”.)

3. The Typo does not impact any payment calculations or benefits to be paid to the Settlement Class. Settlement Class Members can view their specific, individual estimated settlement payments on the Settlement Website. *See Declaration of Orran L. Brown, Sr.* ¶ 15 (D.I. 228). Counsel for the parties have assured the Court that the estimated payments available to Settlement Class Members were and are correctly calculated on and through the Settlement Website to reflect a Rate-Spread Payment amount of \$15 for each \$100,000 of original principal balance.

4. As a result, the Typo in the Notice does not render the overall notice of the Settlement, as specified in sections 3.4 through 3.6 of the Settlement Agreement and adopted in the Preliminary Approval Order, materially misleading. The method of providing notice to Settlement Class Members specified in sections 3.4 through 3.6 of the Settlement Agreement, including the Notice containing the Typo, remains reasonable and appropriate, and it satisfies the requirements of due process and the Federal Rules of Civil Procedure.

5. However, and in its discretion, the Court finds it advisable to correct the Notice and inform affected Settlement Class Members of the Typo. It determines that the parties’ proposed solution, as set forth in the Letter, is reasonable and appropriate and would satisfy the requirements of due process and the Federal Rules of Civil Procedure.

6. Because the Typo does not alter the settlement benefits any Settlement Class Members will receive or any other aspect of the Settlement, it does not mandate any additional notice or a postponement of the current settlement schedule, as set forth in the Preliminary Approval Order.

WHEREFORE, IT IS HEREBY ORDERED THAT:

1. On or before [Date 7 days following entry of this order], the Settlement Administrator shall correct all versions of the Notice that appear on the Settlement Website by substituting “\$15” for “\$25” in Question 6 of the Notice so that it accurately states that Rate-Spread Borrowers “will get an additional \$15 for each \$100,000 of original principal balance on the loan.”

2. On or before [Date 7 days following entry of this order], the Settlement Administrator shall add to each page of the Settlement Website where a Settlement Class Member can access the Notice a message substantially similar to the following:

The Notice has been updated to reflect a correction from the original mailed version of the Notice. A sentence in Question No. 6 of the mailed version of the Settlement Notice read “Borrowers on Loan Accounts that did not do a Rate Renewal after the fixed interest rate available through Rate Renewal dropped 1.5% below the existing fixed interest rate on the loan will get an additional \$25 for each \$100,000 of original principal balance on the loan.” This should have read “\$15” instead of “\$25”. Please note that this correction does not affect the estimated payment amounts displayed on this website (which you can view by logging in and clicking the “How Much Will I Get Paid/View My Notice” button).

3. On or before [Date 14 days following entry of this order], the Settlement Administrator shall mail a one-page notification to all Rate-Spread Borrowers at the addresses determined pursuant to sections 3.4 through 3.5 of the Settlement Agreement. This notification shall inform the recipients of the typo contained in the Notice they received in the mail and inform them that the typo does not affect the estimated payment amounts available on the Settlement Website. The message contained in this notification will be substantially similar to the message in paragraph 2 of this Order.

4. On or before [Date 14 days following entry of this order], the Settlement Administrator shall send via email to all Rate-Spread Borrowers who have supplied an email address to Capital One the one-page notification described in paragraph 3 of this Order.

5. Pursuant to paragraph 12 of the Preliminary Approval Order, the Settlement Administrator shall file a sworn declaration with the Court no later than September 23, 2014. As part of this sworn declaration, the Settlement Administrator shall confirm that it has complied with this Order.

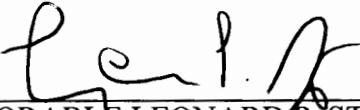
6. All deadlines and other requirements established in the Preliminary Approval Order remain in force and effect, and the Fairness Hearing shall still be held on October 7, 2014.

7. All costs associated with implementing the directives contained in this Order shall be borne equally by Capital One and Settlement Class Counsel and, therefore, will not reduce the amount of settlement benefits available to Final Settlement Class Members.

IT IS SO ORDERED.

Date:

July 30, 2014



HONORABLE LEONARD P. STARK
UNITED STATES DISTRICT JUDGE